

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

VERNON DONNELL FIELDS,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 11-5089
	:	
THE PENNSYLVANIA DEPARTMENT :	:	
OF CORRECTIONS,	:	
Defendant.	:	

ORDER

AND NOW, this 22nd day of March, 2012, upon consideration of the defendant's motion to dismiss (Doc. No. 7), the petitioner's motion to amend Complaint (Doc. No. 15), the Petitioner's motion to withdraw and amend Complaint (Doc. No. 16), and the Report and Recommendation of United States Magistrate Judge Linda K. Caracappa (Doc. No. 14), **IT IS HEREBY ORDERED** that:

1. The Report and Recommendation (Doc. No. 14) is **APPROVED** and **ADOPTED**.¹
2. Defendant's motion to dismiss (Doc. No. 7) is **GRANTED**.
3. Petitioner's motion to withdraw and amend Complaint (Doc. No. 16) is **GRANTED in part and DENIED in part**. Petitioner's request to withdraw his previous motion to amend is **GRANTED**. Petitioner's motion to amend Complaint is **DENIED**.²

¹ I note that the Petitioner did not file objections to the Report and Recommendation.

² Petitioner may not amend his pleading as a matter of course under Fed. R. Civ. P. 15(a)(1) because more than 21 days has passed since the Defendant filed its responsive pleading. Petitioner has not set forth any reason why the Court should give leave under Fed. R. Civ. P. 15(a)(2). Furthermore, adding Michael Wenerowicz, David Diguglielmo, and John Wetzel to the caption, as the Petitioner requests, would not have affected the pending motion to dismiss because the three state officials are entitled to Eleventh Amendment immunity for actions in their official capacities. Melo v. Hafer, 912 F.2d 628, 635 (3d Cir. 1990). The petitioner did not allege any action on the part of

4. Petitioner's motion to amend Complaint (Doc. No. 15) is **DENIED as moot.**
5. The Clerk of Court shall mark this case **CLOSED.**

BY THE COURT:

/s/ *Lawrence F. Stengel*
LAWRENCE F. STENGEL, J.